

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RENARD SLOMKA,

Plaintiff-Appellant,

v

CITY OF HAMTRAMCK HOUSING  
COMMISSION, DOUGLAS ROJEK, LISA  
McGUIRE AHMED, WIESLANA BRZOZKA,  
ALLIE GAINES, and WIESLAW GREGA,

Defendants-Appellees.

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UNPUBLISHED  
November 15, 2007

No. 274537  
Wayne Circuit Court  
LC No. 05-533102-NZ

Before: Zahra, P.J., and White and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) in plaintiff's malicious prosecution and defamation action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was the Executive Director of defendant City of Hamtramck Housing Commission ("the Commission") from 1976 to 2002. Plaintiff's contract with the Commission, which began on January 1, 1997, and continued for a period of six years, provided that plaintiff was to receive a specified number of paid vacation, sick, and personal days each year. The contract, which was drafted by plaintiff, further provided that if the Commission unilaterally terminated the contract, plaintiff was to be compensated for all sick, personal, and vacation time that had accumulated, in addition to the full salary amount for all time remaining in the six-year contractual period.

The Commission passed a resolution to terminate plaintiff's employment in April 2002, for reasons that included mismanagement of federal housing funds, entering into illegal contracts, waste, fraud, and "gross dereliction of duty." The Commission's decision was apparently based in part on the results of an unfavorable on-site management review of the Commission performed by the U.S. Department of Housing and Urban Development (HUD) and the HUD Troubled Agency Recovery Center in June 2001.

In June 2002, plaintiff filed a lawsuit against the Commission in the Wayne County Circuit Court, Case No. 02-219550-CK, alleging breach of the employment contract and

wrongful termination. The Commission filed a counterclaim alleging, among other things, that the employment contract was unenforceable because it contained terms that violated HUD rules and policies and that plaintiff had committed fraud, conversion, and embezzlement by appropriating to himself Commission funds, benefits, and accruals to which he was not entitled.

Orders were entered in Case No. 02-219550-CK that (1) partially granted the Commission's first motion for summary disposition and dismissed plaintiff's claims for payment of sick, vacation, and leave days that accumulated prior to the January 1, 1997, effective date of the contract; (2) dismissed the Commission's counterclaim "without prejudice to its filing as a separate lawsuit"; and (3) ultimately granted the Commission's second motion for summary disposition and dismissed plaintiff's complaint in its entirety, with prejudice. However, on June 22, 2006, this Court issued a decision reversing the trial court's ruling to the extent that it granted summary disposition with respect to plaintiff's accrued vacation, sick, and personal days that accumulated after January 1, 1997. *Slomka v Hamtramck Housing Commission*, unpublished opinion per curiam of the Court of Appeals, issued June 22, 2006 (Docket Nos. 258699; 260015).

Plaintiff filed the instant action against the Commission and its individual members, bringing claims of malicious prosecution and defamation based on the counterclaim that was filed in Case No. 02-219550-CK. Plaintiff alleged that the Commission's statements in its counterclaim that plaintiff had committed fraud, conversion, and embezzlement were false and defamatory statements that were defamatory *per se* in that they injured plaintiff's reputation and defamatory *per quod* in that they injured plaintiff's ability to be employed by any other Housing Authority throughout the United States. Plaintiff further alleged that reasonable inquiry into the finances of the Commission prior to the filing of the counterclaim would have shown that plaintiff did not commit any fraud, conversion, or embezzlement, and the sole purpose of the counterclaim was to maliciously prosecute plaintiff.

Defendants sought summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that plaintiff had failed to state a claim for malicious prosecution because no prior proceeding had terminated in his favor and because he had not alleged a special injury; that plaintiff had failed to state a claim for defamation because the statements made in the counterclaim, as matters contained in pleadings filed according to law in a court having jurisdiction, were absolutely privileged; and that no genuine issue of material fact existed with respect to either the malicious prosecution or the defamation claim.<sup>1</sup> The trial court granted defendants' motion.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings standing alone, *Maiden v Rozwood*, 461

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<sup>1</sup> Plaintiff agreed that his claim of malicious prosecution was "premature" in light of this Court's decision remanding Case No. 02-219550-CK to the circuit court, and asked that the trial court either stay proceedings pending resolution of the underlying case or dismiss the malicious prosecution claim without prejudice.

Mich 109, 119-120; 597 NW2d 817 (1999), and “[t]he motion must be granted if no factual development could justify the plaintiff’s claim for relief,” *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff’s claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind, supra* at 238; *Maiden, supra* at 119-121; see also MCR 2.116(G)(6).

Additionally, the issue of attachment of a privilege presents a question of law for the Court. *Couch v Shultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992).

A claim for defamation consists of the following elements: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation *per se*) or the existence of special harm caused by publication (defamation *per quod*). *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005); *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998).

The trial court properly granted summary disposition of plaintiff’s defamation claim on the basis that the allegedly defamatory communication was absolutely privileged. “An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made.” *Oesterle v Wallace*, 272 Mich App 260, 264; 725 NW2d 470 (2006), quoting *Couch, supra* at 294. The doctrine of absolute privilege is narrow and applies only to communications regarding “matters of public concern.” *Kefgen v Davidson*, 241 Mich App 611, 618; 617 NW2d 351 (2000); *Froling v Carpenter*, 203 Mich App 368, 371; 512 NW2d 6 (1993). Thus, the absolute privilege generally extends only to (1) proceedings of legislative bodies; (2) judicial proceedings; and (3) communications by military and naval officers. *Kefgen, supra* at 618; *Froling, supra* at 371. The rationale for the privilege is to allow persons to express their views without fear of legal repercussions. *Timmis v Bennett*, 352 Mich 355, 364; 89 NW2d 748 (1958); *Froling, supra* at 371.

In this case, the allegedly defamatory statements were made in a judicial pleading. Statements made in the course of judicial proceedings, in pleadings or in argument, as long as they are relevant, material, or pertinent to the issue, are absolutely privileged regardless of falsity or malice on the part of the author. *Maiden, supra* at 134; *Sanders v Leeson Air Conditioning Corp*, 362 Mich 692, 695; 108 NW2d 761 (1961). “[I]mmunity extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue, including pleadings and affidavits.” *Oesterle, supra* at 265, quoting *Couch, supra* at 295. The absolute privilege provided in judicial proceedings is to be liberally construed such that a participant in a legal proceeding is free to express him or herself without fear of retaliation. *Couch, supra* at 295.

Plaintiff claims that the immunity afforded to statements made during judicial proceedings does not apply to the Commission’s counterclaim because the accusations of criminal conduct in that pleading had no relevance or materiality to the issues in the underlying case. It is true that the privilege “does not extend to slanderous expressions against counsel,

parties, or witnesses, when the expressions have no relation to or bearing upon the issue or subject matter before the court.” *Timmis, supra* at 365 (citation omitted). However, the Commission’s averments in its counterclaim were highly relevant to the subject matter before the circuit court, which was whether plaintiff’s employment contract was valid and enforceable. The Commission claimed the contract was not enforceable and that plaintiff had been unjustly enriched by the terms of that contract. Plaintiff’s argument is, essentially, that the statements in the counterclaim were false, as demonstrated by the deposition testimony of three of the Commission’s members.<sup>2</sup> However, if an absolute privilege applies, a communication is not actionable *even if it was false and maliciously published*. *Maiden, supra* at 134; *Sanders, supra* at 695; *Oesterle, supra* at 264; *Couch, supra* at 294. Accordingly, the trial court properly ruled that the statements made in the Commission’s counterclaim were absolutely privileged and that defendants were therefore entitled to summary disposition of plaintiff’s defamation claim.

We further conclude that the trial court properly granted summary disposition of plaintiff’s malicious prosecution claim. The elements of a tort action for malicious prosecution of civil proceedings are (1) the prior proceedings terminated in favor of the present plaintiff, (2) the absence of probable cause for those proceedings, (3) “malice,” which is “a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based,” and (4) special injury. *Friedman v Dozor*, 412 Mich 1, 48; 312 NW2d 585 (1981) (citation omitted). There are three categories of damage that would support an action for malicious prosecution: injury to one’s fame (as by a scandalous allegation), injury to one’s person or liberty, and injury to one’s property. *Id.* at 33-34. Simply alleging damage to one’s professional reputation is not sufficient to constitute a special injury. See *id.* at 17-19; *Barnard v Hartman*, 130 Mich App 692, 695; 344 NW2d 53 (1983). Rather, a loss of fame or reputation will only meet the special injury requirement if the injury is of a kind not ordinarily resulting from similar causes; if the loss of reputation to the plaintiff is of the usual type normally flowing from the maintenance of a similar action, the plaintiff is wholly without remedy. *Barnard, supra* at 696, citing *Friedman, supra*, and cases cited therein. An injury to person or property must amount to a taking, deprivation, or seizure of one’s person or property to meet the special injury requirement of a malicious prosecution claim. See *Young v Motor City Apts*, 133 Mich App 671, 676-678; 350 NW2d 790 (1984). “Interference with one’s usual business and trade, including the loss of good will, profits, business opportunities and the loss of reputation, is not cognizable as special injuries.” *Id.* at 677.

Summary disposition was appropriate not only because the underlying lawsuit has not, as of yet, terminated in plaintiff’s favor, but also because he failed to allege or provide evidentiary support for a finding of special injury. Plaintiff’s sole allegations concerning special injury were

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<sup>2</sup> We note, however, that the few carefully selected excerpts of deposition testimony cited by plaintiff fall well short of establishing that there was no basis for the accusations contained in the counterclaim. Additional testimony from these depositions supports defendants’ assertion that the Commission members believed that plaintiff had converted Commission and HUD funds to his own use by virtue of the overly generous contractual terms and his failure to keep proper records concerning his use of these funds and benefits. In any event, because the absolute privilege that attaches to statements made in the course of judicial proceedings applies regardless of falsity or malice, the deposition testimony is simply irrelevant.

loss of his good name in the community; shame, embarrassment, and ridicule; emotional distress; and the inability to obtain employment with local housing authorities throughout the United States. As noted above, however, damage to one's professional reputation is not in and of itself sufficient to constitute a special injury, see *Friedman, supra* at 17-19, and "shame" and "emotional distress" are not categories of special injury, see *id.* at 33-34. With respect to plaintiff's alleged inability to obtain employment, summary disposition is appropriate under both MCR 2.116(C)(8) and (C)(10); interference with one's usual business and trade is not a special injury. And in any event, plaintiff failed to present any evidence whatsoever establishing a causal link between his inability to obtain employment with other housing authorities and the allegedly tortious conduct of defendants.

Affirmed.

/s/ Brian K. Zahra  
/s/ Helene N. White  
/s/ Peter D. O'Connell